

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JOHN ELMS
37 Leader Drive
Newark, DE 19713

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Mary LeMieux-Fillery, Esq. The Law Offices of Eric A. Shore
Two Penn Center, Suite 1240, 1500 John F. Kennedy Boulevard
Philadelphia, PA 19102 - Telephone: 267-546-0132

DEFENDANTS
WEST CHESTER BOROUGH
401 East Gay Street
West Chester, PA 19380

County of Residence of First Listed Defendant Chester
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question *(U.S. Government Not a Party)*

☐ 2 U.S. Government Defendant

☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<div>PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice</div> <div>PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</div>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<div><input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157</div> <div>PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark</div> <div>SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))</div> <div>FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</div>	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS
☐ 440 Other Civil Rights
☐ 441 Voting
☒ 442 Employment
☐ 443 Housing/Accommodations
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
☐ 530 General
☐ 535 Death Penalty
Other:
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
☐ 560 Civil Detainee - Conditions of Confinement

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District *(specify)*

☐ 6 Multidistrict Litigation - Transfer

☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
42 U.S.C. § 12101 et seq.

Brief description of cause:
Employment Discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
150,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
01/21/2021

SIGNATURE OF ATTORNEY OF RECORD
/s/Mary LeMieux-Fillery, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 37 Leader Drive, Newark, DE 19713

Address of Defendant: 401 East Gay Street, West Chester, PA 19380

Place of Accident, Incident or Transaction: 401 East Gay Street, West Chester, PA 19380

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when *Yes* is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1/21/2021 /s/Mary LeMieux-Fillery, Esq. 312785
Attorney-at-Law / Pro Se Plaintiff *Attorney I.D. # (if applicable)*

CIVIL: (Place a ☒ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
 - ☐ 2. FELA
 - ☐ 3. Jones Act-Personal Injury
 - ☐ 4. Antitrust
 - ☐ 5. Patent
 - ☐ 6. Labor-Management Relations
 - ☒ 7. Civil Rights
 - ☐ 8. Habeas Corpus
 - ☐ 9. Securities Act(s) Cases
 - ☐ 10. Social Security Review Cases
 - ☐ 11. All other Federal Question Cases
- (Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
 - ☐ 2. Airplane Personal Injury
 - ☐ 3. Assault, Defamation
 - ☐ 4. Marine Personal Injury
 - ☐ 5. Motor Vehicle Personal Injury
 - ☐ 6. Other Personal Injury (Please specify): _____
 - ☐ 7. Products Liability
 - ☐ 8. Products Liability – Asbestos
 - ☐ 9. All other Diversity Cases
- (Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Mary LeMieux-Fillery, Esquire, counsel of record or pro se plaintiff, do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- ☐ Relief other than monetary damages is sought.

DATE: 1/21/2021 /s/Mary LeMieux-Fillery, Esq. 312785
Attorney-at-Law / Pro Se Plaintiff *Attorney I.D. # (if applicable)*

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

JOHN ELMS	:	CIVIL ACTION
	:	
v.	:	
	:	
WEST CHESTER BOROUGH	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

1/21/2021	Mary LeMieux-Fillery, Esquire	John Elms
Date	Attorney-at-law	Attorney for
267-546-0132	215-944-6124	maryf@ericshore.com
Telephone	FAX Number	E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN ELMS
37 Leader Drive
Newark, DE 19713

Plaintiff,

v.

WEST CHESTER BOROUGH
401 East Gay Street
West Chester, PA 19380

Defendant.

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:
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JURY DEMANDED

CASE NO.

CIVIL ACTION COMPLAINT

And now Plaintiff, JOHN ELMS, by and through his undersigned counsel, files this Complaint alleging that his rights, pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101) (“ADA”) have been violated and avers as follows:

I. PARTIES

1. Plaintiff, John Elms, hereinafter (“Plaintiff” or “Elms”), is an adult individual residing at 37 Leader Drive, Newark, DE 19713.

2. Defendant, West Chester Borough, hereinafter (“Defendant”) is a borough in the State of Pennsylvania with headquarters located at 401 East Gay Street, West Chester, PA 19380.

3. Defendant owns and operates a municipal services facility located at 401 East Gay Street, West Chester, PA 19380, where Plaintiff was employed.

4. At all times material hereto, Defendant was Plaintiff’s employer and acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

5. Defendant is liable for the actions of its agents, servants and employees performed within the course of their employment through the doctrine of Respondeat Superior.

II. JURISDICTION

6. This civil action for disability harassment, discrimination, and retaliation is instituted pursuant to the Americans with Disabilities Act (“ADA”).

7. Jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over related state law claims because they arise out of the same circumstances and are based upon a common nucleus of operative fact.

8. Plaintiff exhausted his administrative remedies pursuant to the Equal Employment Opportunity Act (See Exhibit “A,” a true and correct copy of a dismissal and notice of rights issued by the Equal Employment Opportunity Commission).

III. FACTS

9. On or about August 1, 2016, Defendant hired Plaintiff as the Director of Parking Services. Elms performed all of his duties without complaints or issues.

10. During his employment with Defendant, Mr. Elms helped Defendant to greatly increase its profits from parking collections.

11. Elms endured harassment during the four years that he was employed with respondent. Elms suffered harassment at the hands of Borough Manager, Michael A. Perrone.

12. Mr. Perrone would humiliate Elms for the way that he walked. And, Mr. Perrone would make fun of Elms while he walked behind him.

13. Mr. Perrone would often refer to Elms as the “crippled man” and forced him to walk eight flights of stairs and up hills when driving would have been an option.

14. Mr. Perrone would always pressure Elms to walk faster which was difficult for Elms to do because of his medical issues.

15. Elms reported Mr. Perrone not only to Human Resources, but also to the Mayor hoping that she would be able to help.

16. As a result of Elms reporting Mr. Perrone's verbal abuse, the harassment intensified.

17. Elms suffered a stroke in 2018 and for fear of losing his job, he was only out of work for less than seven days.

18. Mr. Elms was hospitalized for a week the time from work as a result of the stroke.

19. Mr. Elms shared the fact that he had suffered a stroke with Human Resources and the Defendant's manager.

20. Mr. Elms suffered from memory impairment as a result of the stroke.

21. On one occasion during a public meeting Defendant told Mr. Elms to, "shut up" as he was in the middle of speaking.

22. Elms required hip surgery to improve his quality of life; however, again for out of fear for losing his job, Elms put this off for three years.

23. In or about July 2020, Elms asked another employee to help him with two time cards because Defendant, in error, removed his access. For this, Elms was suspended for five days without pay.

24. On July 28, 2020, Elms was terminated, which he believes was a result of his disability and in retaliation for making complaints to the Mayor.

25. Defendant terminated the Plaintiff on July 28, 2020.

IV. CAUSES OF ACTION

COUNT I

TITLE I CLAIM--AMERICANS WITH DISABILITIES ACT DISCRIMINATION (42 .S.C.A. § 12101 *et seq.*)

26. Plaintiff incorporates paragraphs 1-25 as if fully set forth at length herein.

27. At all times material hereto, and pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, an employer may not discriminate against an employee based on a disability.

28. As a result of his medical condition, Plaintiff is a qualified employee and person within the definition of Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

29. Defendant is an “employer” and thereby subject to the strictures of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

30. At all times material hereto, Plaintiff had a qualified disability, as described above.

31. Based on the foregoing, Plaintiff alleges that Defendants violated the ADA by subjecting him to discrimination on the basis of his actual and/or perceived disabilities and/or records of impairment.

32. Plaintiff was subject to a hostile work environment due to his disability.

33. Plaintiff had to endure pervasive and regular harassment from his supervisor and co-workers when he was harassed by his supervisor Mr. Perrone and was ostracized by his coworkers, due to his disability.

34. Plaintiff endured the offensive conduct because he had no choice in that he needed to keep his job to support his family.

35. The harassment suffered by Plaintiff by his managers and co-workers detrimentally affected him in that, among other things, he suffered embarrassment, humiliation, emotional distress, and disruption to his life because of Defendants actions.

36. The harassment by his supervisors would detrimentally affect a reasonable person for all of the reasons stated herein, as the harassment and its results would cause decreased wages, pain, drying up, lost wages, and embarrassment and humiliation to a reasonable person.

37. Defendants knew or should have known of the harassment as Plaintiff complained about it to Defendants, yet they failed to take prompt, meaningful, remedial action.

38. Defendant's conduct in terminating Plaintiff is an adverse action, was taken as a result of his disability and constitutes a violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

39. Defendant failed to engage in an interactive discussion of Plaintiff's disability and failed to reasonably accommodate his disability.

40. As a proximate result of Defendant's conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of his earning power and capacity and a claim is made therefore.

41. As a result of the conduct of Defendants' owners/management, Plaintiff hereby demands punitive damages.

42. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

43. Plaintiff demands attorneys' fees and court costs.

COUNT II
TITLE I CLAIM--AMERICANS WITH DISABILITIES ACT
RETALIATION
(42 U.S.C.A. § 12101 *et seq.*)

44. Plaintiff incorporates paragraphs 1-43 as if fully set forth at length herein.

45. At all times material hereto, and pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, an employer may not retaliate against an employee based upon him exercising his rights under the Americans with Disabilities Act.

46. Plaintiff is a qualified employee and person within the definition of Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

47. Defendant is an "employer" and thereby subject to the strictures of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

48. As set forth above, Plaintiff engaged in protected activity when he requested continued accommodations previously provided for his qualified disability.

49. As set forth above, Defendant's conduct in terminating Plaintiff is an adverse employment action, was taken as a result of Plaintiff engaging in protected activity and constitutes a violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

50. As a proximate result of Defendant's conduct, Plaintiff sustained significant damages, including but not limited to: great economic loss, future lost earning capacity, lost opportunity, loss of future wages, loss of front pay, loss of back pay, as well as emotional distress, pain and suffering, consequential damages and Plaintiff has also sustained work loss, loss of opportunity, and a permanent diminution of his earning power and capacity and a claim is made therefore.

51. As a result of the conduct of Defendants' owners/management, Plaintiff hereby demands punitive damages.

52. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

53. Plaintiff demands attorneys' fees and court costs.

V. RELIEF REQUESTED

WHEREFORE, Plaintiff, John Elms demands judgement in his favor and against Defendant, West Chester Borough, in an amount in excess of \$150,000.00 together with:

- A. Compensatory damages for: including, but not limited to: emotional distress, pain and suffering, personal injury damages, economic loss, lost wages and benefits, lost future earnings and lost future earning capacity;
- B. Treble damages;
- C. Attorney's fees and costs of suit;
- D. Interest, delay damages; and,
- E. Any other further relief this Court deems just proper and equitable.

Date: January 19, 2021

LAW OFFICES OF ERIC A. SHAORE, P.C.

BY: /s/ Mary LeMieux-Fillery, Esq.

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1500 John F. Kennedy Boulevard
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